ORIGINAL

EX PARTE OR LATE FILED

COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

ADVANCING GLOBAL COMMUNICATIONS THROUGH COMPETITION

1900 M STREET, NW, SUITE 800
WASHINGTON, DC 20036-3508
PH: 202.296.6650
FX: 202.296.7585
www.comptel.org

CompTel

August 18, 1999

Mr. Lawrence E. Strickling
Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: UNE Remand Proceeding
CC Docket No. 96-98

Dear Larry:

CompTel and its member companies have reviewed the evidence submitted in this proceeding regarding the availability of alternatives to unbundled local switching. Based upon that review, and upon the experiences of CompTel's members, CompTel strongly urges the Commission to continue to make unbundled local switching available as a UNE, without the limitations proposed by the Bell Operating Companies ("BOCs") and GTE. CompTel's request for unbundled local switching is supported by the following individual CompTel members: ATX Telecommunications, Inc., Birch Telecom, Inc., Excel Communications, Inc., Golden Harbor of Texas, Inc., ITC^DeltaCom, Inc., Logix, Network Intelligence, Net2000 Communications, Qwest Communications Corp., Unicom and Z-Tel Network Services, Inc.

I. THE NEED FOR UNBUNDLED LOCAL SWITCHING

CompTel's 350 member companies reflect the diversity of the competitive industry itself. These members are attempting to provide local services through all means available under the 1996 Act, including fiber-based, UNE-based, resale and wireless entry strategies. As CompTel explained in its five "*Pro-Competitive Principles for UNE Entry*," all feasible competitive alternatives must be available to both business and residential consumers, today and in the future.

The availability of unbundled local switching is central to consumers' ability to realize the robust competition promised by the 1996 Act. CompTel member companies need access to unbundled local switching for reasons as diverse as the business plans of the companies seeking to use unbundled switching.

First, use of an ILEC's unbundled local switching is the only feasible way for carriers to serve an existing base of geographically dispersed customers. Many of CompTel's member companies have been providing competitive telecommunications services in related markets opened to competition, including the long distance and Internet services markets. These carriers must find a way to serve their existing customers, where those customers are now and wherever they demand service. This cannot be done without access to the ILECs' local switching capabilities on an unbundled basis. For example, Excel Communications, the fourth largest U.S. long distance carrier in terms of presubscribed lines, served over four million subscribers as of the end of 1998, approximately 80 percent of whom were residential customers.[1] Excel has thoroughly studied its alternatives, including the availability of self-provisioning, non-ILEC providers, and section 251(c)(4) resale, and concluded that the only way it can provide local services to its existing customer base is through mandatory UNEs provided in combinations.[2]

Second, use of ILEC unbundled switching is necessary to expand a carrier's "footprint" to compete with the ubiquity of the ILEC. A substantial number of CompTel's members provide service to business customers with offices in more than one location. Increasingly, the trend among these customers is to demand the same level of services in all of their locations, often as part of an integrated local area network. This trend is illustrated by the stated justifications for the proposed "mega-RBOC" mergers, in which the participants claim they need to establish geographic footprints of sufficient size to offer "national-local" customers a single package of local (and long distance) services that covers all (or most) of the customers' locations.[3] Unless competitors have a similar ability to serve these customers' locations, they will increasingly be deprived of the ability to provide service to the customer *anywhere*.[4] Notably, although competitive carriers are rapidly deploying local switches wherever feasible, it simply is impossible

---

1 Affidavit of J. Christopher Dance, attached to the Comments of Excel Communications, Inc., May 26, 1999 ("Dance Aff."), ¶ 2.

2 *Id.*, ¶¶ 7-8.

3 *See,* CC Docket Numbers 98-141 and 98-184.

4 *See, e.g.,* Affidavit of Martin J. Arias, attached as Appendix D to the Comments of CompTel, May 26, 1999 ("Arias Aff."), ¶ 6; Affidavit of Richard L. Tidwell, attached as Appendix C to the Comments of CompTel, May 26, 1999 ("Tidwell May 26 Aff."), ¶ 6.

both practically and economically to deploy such switches fast enough or widely enough to match the incumbent's ubiquitous scope.[5] Thus, no matter how many switches a carrier has deployed itself, or how many the competitive industry has deployed collectively, the ILEC's switching reaches customers, today and in the future, that are beyond a carrier's capabilities.[6] Mandatory access to ILEC switching is necessary to provide consumers in these situations with an alternative to the ILEC's retail services.

Third, in order for CompTel's member companies to compete effectively with ILECs that are able to provide packages of local and long distance services, it must be as easy for the customer to shift its *local* service to a package offered by a competitive carrier as it will be for the customer to integrate its *long distance* service to a package offered by its incumbent local exchange carrier. Significantly, ILECs will be able to provision "one-stop" packages of local and long distance service by using the fully automated, time-tested, and inexpensive "PIC-change" process.[7] For "one-stop" competition to be viable, a similar automated process must be available to migrate local customers. As CompTel showed in its *ex parte* of August 6, only combinations that involve unbundled local switching are capable of satisfying this critical requirement.[8]

---

5 Indeed, even carriers as large as SBC have argued that they are not large enough to enter multiple national markets in a time frame needed to offer such products:

> [W]hat I am telling you is we're not going to go into a de novo entry to evolve into a national company. It would be a death march, in our opinion.

Testimony of James Kahan, Senior Vice President, SBC Corporation, before the Ohio Public Utility Commission, In re: Joint Application of SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation and Ameritech Ohio for Consent and Approval of a Change of Control, Public Utility Commission of Ohio, Case No. 98-1082-Tp-AMT, Hearing Transcript, Volume 1, pp. 176-177, January 7, 1999.

6 Moreover, the evidence demonstrates that non-ILEC supply of switching capability has not developed. CompTel Comments at 39.

7 "PIC-change process" refers to the systems which implement a subscriber's choice of its presubscribed interexchange carrier (or "PIC"). *See* 47 C.F.R. § 51.319(c)(1)(ii).

8 *Ex Parte* Notice from Steven A. Augustino, counsel to CompTel, to Magalie R. Salas, FCC, August 6, 1999 (Attachment, "The Importance of Interchangeability").

Finally, use of ILEC unbundled switching is needed in combination with other UNEs in order to provide new and innovative services to consumers. CompTel is extremely proud of the innovation its members have provided, both in end user telecommunications services and in billing and "back office" solutions. This innovative tradition continues today with providers such as Z-Tel, which offers an integrated voice, fax, email and group messaging service to residential customers in New York City using UNE-P.[9] Z-Tel's services are available, however, only where UNE combinations including local switching are mandated: due to limitations on the use of UNE-P in New York, Z-Tel offers service to residential customers in New York City, but must turn away business customers seeking its services.[10]

The ILECs build their case against unbundled local switching on the theory that self-supply of switching is a simple, quick and easy undertaking for competing carriers. Although CLECs – including many CompTel members who need access to unbundled switching – are rapidly deploying their own local switches whenever practically and economically feasible, unbundled switching meets any reasonable construction of Section 251(d)(2)'s "impairment" standard. The evidence in the record clearly demonstrates that, in terms of delay, cost and quality, a requesting carrier's ability to provide the services it seeks to offer is impaired by a denial of access to the ILECs' switching capabilities.

First, despite the ILECs' misleading and inaccurate citations to vendor delivery projections, installation of a local switch takes on average at least 9-12 months, sometimes more.[11] Actual delivery of the switch by the vendor is but one part of the process of self-supplying local switching. For example, KMC Telecom's standard installation to service interval for a Lucent 5ESS switch is between 9 and 12 months, only 8 weeks (40 business days) of which is attributable to delivery of the switch itself.[12] The majority of the installation time is occupied by activities such as site selection and preparation, facility and interconnection arrangements with the ILECs, end office collocation, and testing.[13]

---

9 *See* Affidavit of David Malfara, attached as Appendix C to the Comments of CompTel, May 26, 1999 ("Malfara Aff.").

10 *Id.*, ¶ 8.

11 *See* Affidavit of Andrew M. Walker ("Walker Aff."), Declaration of Jerry James ("James August 10 Dec."), and Affidavit of Richard L. Tidwell ("Tidwell August 10 Aff."), attached to *ex parte* notice of CompTel, August 11, 1999; *see also* letter from Roy Choates, KMC Telecom, to Magalie R. Salas, FCC, August 12, 1999 ("KMC August 12 *ex parte*").

12 KMC August 12 *ex parte*.

13 James August 10 Dec., ¶ 4; Walker Aff., ¶ 4; KMC August 12 *ex parte*.

Second, self-provisioning of a switch is extremely costly. The record demonstrates that, on average, installation of a local exchange switch costs several million dollars per local switch.[14] Moreover, switch installation costs are artificially inflated by ILEC collocation costs, which remain high despite the changes recently mandated in the FCC's *Collocation Order*.[15] In addition, carriers often cannot justify the capital expenditures of a switch without first establishing a customer base and revenue stream that would support its costs. Many carriers cannot obtain the necessary lender commitments, particularly in "second tier" markets without an existing revenue stream in the location where the switch will be placed.[16] As a result, the availability of UNEs becomes critical as an initial entry strategy even for those carriers that plan to replace UNEs with their own switches as quickly as possible.

The third impairment factor – quality of service – also is affected by the denial of access to ILEC unbundled switching. Use of an externally-supplied switch is not interchangeable with the ILEC's switching capability. Whereas an ILEC can connect its switching to loops through automated provisioning systems, carriers using their own switch must have ILEC loops manually disconnected and connected to the CLEC's collocation arrangement. CompTel continues to receive reports from its members of persistent problems with "hot cuts" of UNEs in nearly all RBOC regions.[17]

As a result, requesting carriers are impaired by restrictions on the availability of unbundled local switching. By contrast to the 9-12 month process for self-provisioning a switch, a requesting carrier can enter the market using ILEC unbundled switching in three months or less.[18] A requesting carrier that already provides a related service in the market or provides local services in a nearby area may be able to shorten the time it takes

---

14 *See, e.g.,* Arias Aff., ¶ 5; Tidwell May 26 Aff., ¶ 5; James August 10 Dec., ¶ 4; Walker Aff., ¶ 4.

15 The ILECs have not filed FCC tariffs implementing the *Collocation Order*, and have sought to undermine the reforms at the state level. For example, CompTel members report that recent quotes from U S West for cageless collocation average $41,000 (compared to $53,000 for caged collocation). Further, ILECs generally are not offering shorter provisioning intervals for cageless collocation, even thought the activities necessary are significantly fewer than needed for caged collocation.

16 James August 10 Dec., ¶ 5; *cf.* Tidwell August 10 Aff., ¶ 4.

17 CompTel is compiling examples of "hot cut" problems its members are experiencing, and expects to submit further information in this proceeding shortly.

18 Walker Aff., ¶ 5; *see* James August 10 Dec., ¶ 6; Tidwell August 10 Aff., ¶ 5.

to enter the market using the ILEC's switching UNE.[19] Without access to local switching, the result will be more delay, higher costs and unexplained service outages, all of which will harm consumers by denying them competitive alternatives to the ILEC's local service. Accordingly, applying Section 251(d)(2) consistent with the purposes of the Act, the Commission should mandate unbundled local switching as a network element.

* * *

Ensuring access to the full range of network elements necessary for competitive carriers to compete is a top priority of CompTel. As explained above, unbundled switching is critical to the achievement of the goals Congress established in the 1996 Act. CompTel urges the Commission to require ILECs to provide unbundled switching – individually and in combination with other UNEs – in order to promote the development of competition for all Americans, in all areas of the country.

Sincerely,

Carol Ann Bischoff

Carol Ann Bischoff
Executive Vice President
& General Counsel

Enclosure

cc: Magalie R. Salas (2 copies for file)
Bob Atkinson
Jake Jennings

---

[19] Walker Aff., ¶ 8; James August 10 Dec., ¶ 6; Tidwell August 10 Aff., ¶ 5.